

APPEAL NO. 010442

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 11, 2000. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 002545, decided December 14, 2000, remanded the case to the hearing officer to take such specific evidence necessary to determine if the respondent (claimant) had refused an MRI and, if not, whether the MRI was such newly discovered evidence which would change the hearing officer's decision regarding disability from April 20, 2000, to October 11, 2000. A hearing on remand was held on February 1, 2001. The hearing officer determined that the claimant had disability from April 20 to October 11, 2000.

The appellant (carrier) appealed, contending that during a portion of the time the hearing officer found that the claimant had disability, the claimant was, in fact, pregnant and delivered her child on July 22, 2000, and, therefore, her inability to obtain and retain employment was due to the claimant's "delaying her medical treatment during the pendency of a pregnancy." The claimant responded, urging affirmance.

DECISION

Affirmed.

The background facts are recited in Appeal No. 002545 and will not be repeated here. The hearing officer in that case found that the claimant had disability from April 20 through June 7, 2000, and that there was no objective evidence of disability from June 8 through October 11, 2000. In that case, there was evidence that an MRI had been ordered but not performed. Subsequently, on October 28, 2000, after the first CCH, the MRI was performed and showed a herniated disc at L4-5 and grade I spondylolisthesis. The carrier, at the first CCH, argued that the injury had not been disputed so no specific authorization for an MRI was necessary and if there was no MRI it was because the claimant had refused the test or the doctor had failed to order it. The Appeals Panel, in Appeal No. 002545, *supra*, remanded for findings as to why the MRI had not been performed in August 2000 and if the MRI, as newly discovered evidence, would change the hearing officer's opinion on disability.

At the hearing on remand, the parties stipulated that the carrier had denied the MRI scheduled for August 20, 2000. We find the hearing officer's decision to be supported by the evidence and, accordingly, the decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge